Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	

To: The Commission

COMMENTS OF
CTIA–THE WIRELESS ASSOCIATION®

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I. INTRODUCTION AND SUMMARY

CTIA-The Wireless Association® ("CTIA") submits the following comments on the Commission's public notice seeking further comment on certain issues in the universal service and intercarrier compensation reform proceeding.[1] CTIA appreciates the opportunity to comment on the issues set out for further inquiry, and to address the specific proposals including the State Joint Board Members' Plan,[2] the ABC Plan,[3] the RLEC Plan,[4] and the Joint Letter.[5]

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[1] *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, Public Notice, DA 11-1348 (rel. Aug. 3, 2011) ("Public Notice").

[2] Comments by State Members of the Federal-State Joint Board on Universal Service, WC Docket Nos. 10-90 *et al.* (filed May 2, 2011) ("State Members' Plan").

The record in this proceeding makes clear that reform of these programs is long overdue and that a re-envisioned framework for deploying advanced telecommunications services in high cost areas must take into account the explosive consumer demand for mobile broadband services. Thus, CTIA believes that, among the priorities for reform that the Commission must address, essential elements of successful reform must be the expeditious reduction of intercarrier compensation rates and the creation of a robust Mobility Fund to facilitate the deployment of mobile broadband services to unserved areas.

CTIA has long called for reform of both of the outdated intercarrier compensation and universal service mechanisms to recognize the value of mobile services to today's consumers, make more efficient use of scarce government subsidy resources, eliminate marketplace distorting regulatory arbitrage, and promote investment into innovative technologies by commercial providers. The ABC Plan advances several key goals, particularly in the area of intercarrier compensation reform. In particular, the ABC Plan focuses on the development of low, uniform cost-based rates, calls for access replacement mechanisms to be used only as transitional tools, and calls for expeditious solutions to traffic pumping. The Plan also advances the discussion on universal service reform by calling for a focus on broadband and mobility and recognizing the need to reassess the current rate-of-return mechanism.

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[3] Letter from Robert Quinn, AT&T; Steve Davis, Century Link; Michael Skrivan, Fairpoint; Kathleen Abernathy, Frontier; Kathleen Grillo, Verizon; Michael Rhoda, Windstream; to Marlene Dortch, FCC, WC Docket Nos. 10-90 *et al.* (filed July 29, 2011) ("ABC Plan").

[4] Comments of the National Exchange Carrier Association, Inc., *et al.*, WC Docket Nos. 10-90 *et al.* (filed April 18, 2011 ("RLEC Plan").

[5] Letter from Walter McCormick, USTelecom; Robert Quinn, AT&T; Melissa Newman, CenturyLink; Michael Skrivan, FairPoint; Kathleen Abernathy, Frontier; Kathleen Grillo, Verizon; Michael Rhoda, Windstream; Shirley Bloomfield, NTCA; John Rose, OPASTCO; Kelly Worthington, WTA, WC Docket Nos. 10-90 *et al.* (filed July 29, 2011) ("Joint Letter").

CTIA believes that there are several necessary elements that must be included in universal service and intercarrier compensation reform. In particular, it is critical for the Commission to develop a robust, ongoing mobility fund that will help facilitate the wireless broadband goals of the President and the Commission. Consumers are rapidly migrating to mobile broadband, and a sufficient mobility fund that ensures that Americans have access to those services is consistent with the goals of Congress, the National Broadband Plan, and the Commission. CTIA also offers a number of specific recommendations for improving the proposed framework, and other areas for further examination by the Commission.

II. MEANINGFUL, SIGNIFICANT INTERCARRIER COMPENSATION REFORM WILL FOSTER INNOVATION AND BENEFIT CONSUMERS

A. Low, Uniform Rates Will Promote Efficiency and Facilitate the Transition to IP Networks

CTIA strongly agrees with the ABC Plan proponents that the Commission should transition intercarrier compensation rates to lower, more uniform levels.[6] CTIA has long made the case that lower, more uniform intercarrier compensation rates are necessary to promote efficiency and reduce opportunities for arbitrage.[7] Reform will eliminate incentives for schemes such as traffic pumping, and will increase economic efficiency by requiring carriers to recover their costs from their own end users. It also will remove financial disincentives to the transition to more efficient, feature-rich IP-based networks and interconnection.

The ABC Plan includes an analysis by noted economist Jerry Hausman of MIT demonstrating that a transition to a near-zero rate would generate consumer benefits of

[6] ABC Plan, Att. 1 at 10-12.

[7] *See, e.g.*, CTIA comments, CC Docket No. 01-92 (filed May 23, 2005) ("CTIA METE Comments"); Joint Ex Parte of CTIA, VON Coalition, *et al.*, CC Docket No. 01-92 (filed Aug. 6, 2008); CTIA comments, WC Dockets Nos. 10-90 *et al.*, (filed April 18, 2011) at 34-37 ("CTIA USF/ICC Transformation Comments").

approximately $9 billion per year.[8] Dr. Hausman's analysis shows that the Commission's prior intercarrier compensation reform for wireless carriers created consumer surplus for consumers of approximately $64.50 per consumer per month, or a total of $114.5 billion per year.[9]

CTIA continues to support an ultimate transition to a default bill-and-keep regime,[10] which is consistent with the realities of the modern telecommunications network and cost-causation principles.[11] Both the calling and called parties benefit from participating in the call, and a bill-and-keep regime fairly apportions costs on that basis – a point the Commission has recognized for a decade.[12] In order to move closer to that goal, CTIA believes that the Commission should place a high priority on an expeditious reduction in rates to a low, uniform, cost-based rate, such as the $0.0007 target set in the ABC Plan. The Commission has previously concluded, and the D.C. Circuit has affirmed, that the $0.0007 rate is reasonable and compensatory for ISP-bound traffic.[13] CTIA therefore urges the Commission to transition all price cap ILEC, CLEC, and CMRS terminating rates to a uniform default rate of $0.0007 as

[8] ABC Plan, Att. 4 at 5-9.

[9] *Id.* at 6.

[10] *See, e.g.*, CTIA METE Comments at 10-12; CTIA USF/ICC Transformation Comments at 37-39.

[11] *See, e.g., USF/ICC Transformation NPRM* at ¶ 525. *See also* Letter from Sprint, Google, Skype, Vonage, and Ad Hoc, WC Docket Nos. 10-90 *et al.*, at 8 (filed August 18, 2011).

[12] *USF/ICC Transformation NPRM* at ¶ 525 & n.779; see also *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

[13] *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, Order, 19 FCC Rcd 20179, 20187 ¶ 23 (2004) ("*Core Forbearance Order*"), *aff'd sub nom. In re Core Communications*, 455 F.3d 267 (D.C. Cir. 2006) ("*Core I*").

swiftly as possible.[14] CTIA also agrees with the proposal in the Joint Letter to reduce many rate-of-return ILEC terminating access rates to $0.0007 as a minimum step towards lower, unified rates, and encourages the Commission to facilitate this transition as soon as practicable.[15]

At minimum, the Commission should make clear that, consistent with the ABC Plan, no intercarrier rates should be permitted to increase during or after the transition to a unified $0.0007 rate.[16] Any opportunity to increase other intercarrier rates would only create a new opportunity for arbitrage, and would also interfere with the efficiencies that flow from carriers' recovering their costs primarily from their own end users.

B. The Commission Possesses, and Promptly Should Exercise, Authority Over the Framework for Compensation for All Telecommunications Traffic

The ABC Plan correctly and persuasively demonstrates that the Commission possesses broad statutory authority over the exchange of all "telecommunications" traffic and therefore may establish a methodology for the intercarrier compensation rate transition.[17] CTIA has long observed that the 1996 Act squarely contemplated the elimination of the existing access charge regime and the exchange of all traffic under section 251(b)(5).[18] The 1996 Act preserved the access regime in a savings clause, pending further reform by the Commission,[19] but it is difficult

[14] ABC Plan, Att. 1 at 11.

[15] Joint Letter at 3 n.1.

[16] ABC Plan, Att. 1 at 11 ("No terminating or other intercarrier compensation rates may increase.").

[17] ABC Plan, Att. 5.

[18] *See, e.g.*, CTIA METE comments at 20-21; CTIA USF/ICC Transformation Comments at 40-42.

[19] 47 U.S.C. § 251(g).

to imagine that Congress expected the Commission to wait 15 years to implement section 251(b)(5) fully.

CTIA notes that the State Joint Board Members have pointed out that Section 251(g) "was intended to maintain the pre- [Telecommunications Act of 1996] *status quo*" access charge regime,[20] but that is true only until those regulations "are explicitly superseded by regulations prescribed by the Commission."[21] Accordingly, the Act explicitly contemplated not only that the Commission would eventually treat *all* "telecommunications" traffic under section 251(b)(5), but also that the 1996 status quo intercarrier compensation regime would remain in place only until such time as the Commission expressly superseded that regime—precisely as it now proposes to do. Once the Commission has adopted a pricing methodology for the exchange of all telecommunications traffic pursuant to section 251(b)(5), a state's ability to maintain rates inconsistent with the pricing methodology established by the Commission must cede to section 251(b)(5), and would no longer be protected (if in fact it ever was) by section 251(d)(3).

In any event, the Commission unquestionably has authority under sections 201 and 332 to reduce to more efficient levels all intercarrier compensation charges paid by or to CMRS carriers.[22] The D.C. Circuit has recently confirmed that the Commission has "the authority to regulate intrastate termination rates" paid by CMRS carriers under these statutory provisions.[23]

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[20] State Joint Board Members NPRM Comments at 143.

[21] 47 U.S.C. § 251(g).

[22] NPRM at ¶ 511.

[23] *MetroPCS California, LLC v. FCC*, No. 10-1003 (D.C. Cir. May 17, 2011), *slip op.* at 4-5. While confirming the FCC's jurisdiction over intrastate termination rates paid by CMRS carriers, the court also upheld the FCC's election, in that instance, to permit the states to regulate such rates under the current regime. *Id.*

Moreover, there are strong policy reasons for the Commission to exercise its authority over intercarrier compensation rates, as proposed in the ABC Plan. First, a piecemeal approach would fail to ensure that rates would be unified, allowing arbitrage and inefficient incentives to continue. Even if the Commission provided "inducements" for the states to lower intrastate access rates, there would be no guarantee that rates would be reduced. And the need to allow inducements to act would require far too long for any reasonable transition. For example, the Public Notice seeks comment on allowing states three years "to develop an intrastate reform plan."[24] At the end of three years, a significant portion of the transition should be *completed*. Because regulators have delayed reform so long already, now only a federal approach will be timely.

Retaining state authority also would require the preservation of the intrastate access regime, which would require the continued categorization of traffic by jurisdiction, but jurisdictional boundaries have become increasingly irrelevant. More and more traffic originates and terminates on mobile and Internet-based devices with no fixed locations, and providers increasingly sell "all-distance" services that are not priced based on distance (and certainly not based on regulatory jurisdiction). Requiring carriers to categorize traffic based on local calling areas, LATAs, and states has become a hollow regulatory burden with no practical consequence outside of the intercarrier compensation system.

Congress gave the Commission authority over the framework for the exchange of all telecommunications traffic. The Commission should exercise this authority to effectuate the long-overdue transition of intercarrier rates to lower, more uniform levels.

[24] Public Notice at 12.

C. The Intra-MTA Rule Advances the Commission's Reform Goals

The intra-MTA rule has been an unqualified success for the Commission and consumers. Maintaining or expanding the intra-MTA rule advances the Commission's goals in this proceeding. The Commission's NPRM and virtually all parties agree that the only solution to arbitrage and inefficiency is for carriers to exchange traffic at rates that are uniform and lower than current access rate levels.[25] The economic analysis submitted with the ABC Plan reveals that the implementation of the intra-MTA rule (combined with the mirroring rule) resulted in consumer surplus gains of approximately $114.5 billion per year between 1996-2008.[26]

The intra-MTA rule brings more traffic into the reciprocal compensation regime, which is subject to TELRIC pricing standards and, in many cases, the mirroring rule.[27] Thus, the intra-MTA rule results in more traffic being exchanged as reciprocal compensation traffic at lower, more uniform rates, consistent with the Commission's goals in this proceeding. Conversely, if the intra-MTA rule were eliminated, more traffic would be swept within the access charge regime, because MTAs are generally larger than ILEC local calling areas. This would increase inefficiency and opportunities for arbitrage, and thus represent a counterproductive step backward in the Commission's reform effort.

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[25] *Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4570 ¶ 40 (2011) ("*USF/ICC Transformation NPRM*"). *See also, e.g.,* Ad Hoc Telecommunications Users Committee Comments at 42; AT&T Comments at 9-16; California Comments at 19; Comcast Comments at 3-4; CTIA Comments at 35-36; NECA, NCTA, *et al.*, Comments at 12 (all in WC Docket Nos. 10-90 *et al.*, filed on or about April 18, 2011).

[26] ABC Plan, Att. 4 at 6.

[27] *See Intercarrier Compensation for ISP-Bound Traffic, et al.*, CC Docket Nos. 99-68 *et al.*, Order on Remand, Report and Order, and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008), *aff'd Core Comm's v. FCC*, 592 F.3d 139 (D.C. Cir. 2010).

Elimination of the intra-MTA rule would undermine, not advance, efforts to reduce abuse of the intercarrier compensation system. There is no meaningful evidence of abuse of the intra-MTA rule. NTCA has submitted a filing suggesting that a single, very small wireless carrier may be mis-categorizing traffic as intra-MTA wireless traffic,[28] but it is unclear whether the intra-MTA rule would even apply in that case.[29] By contrast, the access regime is subject to well-documented abuse including traffic pumping.[30] As CTIA previously has pointed out, LECs target wireless carriers, too, with traffic pumping schemes,[31] and one independent analytical firm has estimated that traffic pumping cost wireless carriers more than $150 million in 2010 alone.[32] This abuse siphons money away from wireless carriers' efforts to deploy affordable mobile broadband to more American consumers. Ultimately, any system that differentiates between functionally identical traffic based on arbitrary regulatory classifications will create opportunities

[28] Letter from Michael Romano, NTCA, to Marlene Dortch, FCC, CC Docket No. 01-92 (filed July 18, 2011). *See also* Letter from Jerry Weikle, ERTA, to Marlene Dortch, FCC, CC Docket Nos. 01-92 *et al*. (filed July 8, 2011).

[29] For example, it is unclear whether the "common carrier wireless exchange" offering of the entity, Halo Wireless Inc., qualifies as CMRS because the information available does not reveal whether this offering is a mobile service. *See* 47 C.F.R. § 20.3 (defining CMRS as a "mobile service"). *See also* Letter from W. Scott McCollough, counsel to Halo Wireless, Inc., to Marlene Dortch, FCC, WC Docket Nos. 10-90 *et al.* (filed Aug. 12, 2011), Att. at 7.

[30] *See, e.g., Sprint v. Northern Valley*, File No. EB-11-MD-003, Memorandum Opinion and Order, DA 11-111 (rel. July 18, 2011); *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd 17989 (2007) ("*Traffic Pumping NPRM*").

[31] *See, e.g.*, Comments of CTIA, WC Docket No. 07-135 *et al.* (filed April 1, 2011) at 4-8; Letter from Scott Bergmann, CTIA, to Marlene Dortch, FCC, WC Docket No. 07-135 (filed Oct. 13, 2010).

[32] *See* "Traffic Pumping Cost Wireless Carriers More Than $150 Million in 2010," Connectiv Solutions (March 2010), available at http://www.connectiv-solutions.com/Traffic-Pumping-Cost-Wireless-Carriers-More-Than-150-Million-in-2010.html.

for arbitrage. The solution is to accelerate the transition to a unified approach – not to move more traffic into the access charge regime.[33]

The overwhelming weight of the evidence demonstrates that the best way to prevent abuse is to remove traffic from the access charge regime as quickly as possible and transition it to more rational pricing regimes, such as TELRIC-based reciprocal compensation or IP peering. Eliminating the intra-MTA rule would be directly contrary to these goals.

In addition, the intra-MTA rule makes intercarrier compensation for wireless traffic more consistent with wireless carriers' end-user charges for such traffic. Virtually no wireless carriers today assess long distance charges on their customers for calls within an area smaller than the MTA; indeed, wireless calling areas are generally even larger. If wireless carriers were required to pay access charges based on ILECs' local calling areas, wireless carriers would have to pay access charges for more calls that wireless carriers bill as "local" to their own end users. ILEC local calling areas have no relevance to wireless consumers, and there is no justification to impose them on wireless traffic.

The State Members' comments assert that the FCC should "require wireless carriers to recognize wireline local exchange boundaries for purposes of paying access on intrastate traffic,"[34] but offer no explanation or justification for this argument. More recently, NARUC has stated that wireless traffic should not be given "additional 'special treatment'" and that "treatment of wireless carrier traffic must become more aligned with the intercarrier

[33] Indeed, eliminating the intra-MTA rule doesn't "fix" the problem of a company that wants to game the system by mis-categorizing traffic, but rather creates even more incentives to mis-categorize traffic.

[34] State Members Comments, WC Docket Nos. 10-90 *et al.* (filed April 18, 2011) at 154.

compensation rules that apply to the traffic of other carriers."[35] In fact, wireless carriers' traffic is treated virtually identically to other carriers' traffic under current rules: Wireless local traffic is subject to reciprocal compensation and wireless long distance traffic is subject to access charges.[36] The fact that the Commission's rules for defining "local" traffic take some account of wireless carriers' network configurations does not mean that wireless carriers receive "special" or "different" treatment. No other carriers should be arbitrarily subjected to ILECs' local calling areas which, as discussed above, are completely irrelevant to wireless carriers and their customers.

The current reform effort is not an appropriate forum to re-litigate the jurisdictional issues in the Commission's original adoption of the intra-MTA rule, which was upheld by the courts. Irrespective of the states' views on Congress's decision to grant the Commission authority over wireless traffic,[37] history has shown that Congress's decision was well-founded. Wireless services are inherently interstate in nature, and it is entirely consistent with the statutory framework for the Commission to determine the appropriate compensation framework for traffic that originates or terminates on mobile networks.

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[35] State Members' Ex Parte, WC Docket Nos. 10-90 *et al.* (filed July 14, 2011) at 9.

[36] The most notable differentiation between wireless and wireline traffic is that wireless providers are prohibited from imposing access charges for terminating traffic by Commission rule or tariff, while they must pay access charges for the termination of their traffic. *See Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling, WT Docket No. 01-316, FCC 02-203 (2002). This asymmetry in the current rules works to the detriment of wireless providers and their consumers.

[37] The states originally challenged the FCC's exercise of this authority in the initial implementation of the 1996 Act, but the courts upheld the FCC's jurisdiction. *Iowa Utils Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997) (rev'd on other grounds) ("Because Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by Commercial Mobile Radio Service (CMRS) providers …, and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers.").

Given the beneficial effects of the intra-MTA rule generally, CTIA fully supports the ABC Plan's proposal to apply the intra-MTA rule to wireless VoIP traffic.[38]

D. Any ILEC Recovery Mechanism Must Be Narrowly Tailored and Transitional

As discussed above, and as CTIA previously has explained, one important long-term goal of reform should be to ensure that all carriers recover their costs primarily from their own customers.[39] This model has been highly successful in the wireless industry and the Internet ecosystem. Any recovery mechanism should advance this goal to the extent feasible.

CTIA has long argued that the purpose of any recovery mechanism should be to provide ILECs and their investors a reasonable amount of time to adjust their business models to account for the elimination of intercarrier charges; universal service support should *not* be used simply to preserve "revenue neutrality."[40] Thus, if the FCC determines that some access replacement support is necessary, CTIA agrees with Plan supporters that any such support should be eliminated after a reasonable transition. The ABC Plan proposes such a transition for price cap carriers,[41] and a specific transition plan is similarly important for rate-of-return ILECs, to ensure that these carriers begin to modify their business plans as necessary in light of reform.[42] Thus,

[38] ABC Plan, Att. 1 at 10.

[39] CTIA USF/ICC Transformation Comments at 35-36.

[40] *See, e.g.*, CTIA USF/ICC Transformation Comments at 42-43.

[41] ABC Plan, Att. 1 at 12-13.

[42] Neither the Joint Letter nor the RLEC Plan appears to contemplate a phase-out of rate-of-return carriers' access replacement support.

the Commission should make clear that *all* access replacement support will be phased out as quickly as practicable, but by no means later than July 1, 2020, consistent with the ABC Plan.[43]

CTIA agrees with the ABC Plan proponents that rate benchmarks can serve as a valuable tool in the analysis of transitional access replacement mechanisms.[44] Similarly, CTIA supports allowing ILECs to increase end-user charges, such as subscriber line charges ("SLCs"), as intercarrier charges are transitioned downward, thereby shifting cost recovery to carriers' own customers (and away from other carriers' customers).[45] CTIA encourages the Commission to explore the ABC Plan's framework, which would allow increases while also imposing a cap on total end-user charges, including the local residential rate, federal and state SLCs, mandatory EAS charges, and any per-line contribution to the state's high-cost fund.[46] In developing either a rate benchmark or cap, CTIA encourages the Commission to take into account the prices of competitive services, such mobile wireless service, which are available in the marketplace and increasingly adopted by consumers. Rate benchmarks should be set as high as possible within the range of reasonableness – which will limit the impact on the amount of access replacement funding necessary – and in any case not lower than any applicable state benchmarks. CTIA also encourages the Commission to consider an escalating rate benchmark, rather than simply adopting a static proxy for consumer affordability.

CTIA also notes that rate benchmarks should play an important role by ensuring that excessively low rates are not subsidized, and rewarding states that have already undertaken

[43] ABC Plan, Att. 1 at 13.

[44] ABC Plan, Att. 1 at 11.

[45] ABC Plan, Att. 1 at 12.

[46] *Id.*

reform. Thus, CTIA also strongly supports the use of the consumer rate threshold as an imputation for a certain level of end-user recovery for intrastate rate reductions.[47]

III. THE ABC PLAN RECOGNIZES THE NEED TO ENSURE UBIQUITOUS MOBILE BROADBAND SERVICE THOUGH THE FCC MUST ENSURE THAT THE MOBILITY FUND IS SUFFICIENTLY ROBUST

As CTIA has argued consistently in this proceeding, consumers increasingly favor mobile technologies, and the Commission must ensure that rural consumers have "reasonably comparable" access to mobile broadband service.[48] In addition, the Commission has a responsibility to ensure that mobility funding is "sufficient" and "predictable."[49] CTIA is concerned that current proposals for a mobility-focused fund are not nearly sufficient to meet the need for ubiquitous mobile broadband in high-cost areas.

The ABC Plan proposes a Mobility Fund that would target approximately $300 million annually in support for mobile broadband services.[50] CTIA applauds the recognition of the need for on-going support for mobile services, however, this funding level appears insufficient to meet the needs of mobile broadband consumers in high-cost areas. This is particularly true given that CTIA submitted a cost study in 2008 demonstrating that it would require an investment of approximately *$22 billion* to bring ubiquitous 3G service to unserved areas.[51] While providers have made considerable progress in deploying 3G networks since 2008, developing a well-

[47] Public Notice at 11.

[48] 47 U.S.C. § 254(b)(3).

[49] *Id.* at § 254(b)(5).

[50] ABC Plan, Att. 1 at 8.

[51] CostQuest Associates, "U.S. Ubiquitous Mobility Study: Identification of and Estimated Initial Investments to Deploy Third Generation Mobile Broadband Networks in Unserved and Underserved Areas," attachment to CTIA comments, WC Docket No. 05-337 (filed April 18, 2008).

calibrated estimate of the support levels needed to bridge the private investment gap is a key component to sizing the proposed Mobility Fund.

In determining the appropriate size of the Mobility Fund, the Commission must also take account of the fundamental nature of mobile networks, which must be available wherever Americans live, work, and travel. Thus, in identifying areas that are unserved or uneconomic to serve, the Commission must consider not just residential locations, but also business locations, uninhabited road miles, recreation areas, and work sites that are located off of marked roads (such as mines and logging camps). As Senator Rockefeller has noted, the impact of the tragic explosion at the Upper Big Branch mine was exacerbated by the lack of wireless service in the area.[52] Thus, as the Commission moves forward, it should be guided by Senator Rockefeller's admonition that the reformed universal system must recognize that "[e]veryone in this country, no matter who they are or where they live, deserves access to modern communications services, including broadband and wireless services."[53]

CTIA has previously documented the enormous and ever-increasing value of mobile services to all consumers, particularly rural and low-income consumers.[54] Recent surveys by the Pew Internet & American Life Project confirm that mobile phone ownership among adults in the United States is nearly universal, as 83% of American adults own a cell phone of some kind.[55] As mobile phones "have become a near-ubiquitous tool for information-seeking and

[52] Letter from Sen. John D. Rockefeller, IV, to Chairman Julius Genachowski, FCC (Aug. 2, 2010).

[53] *Id.* at 2.

[54] *See* CTIA USF/ICC Transformation Comments at 4-9.

[55] Pew Internet & American Life Project, "Americans and their cell phones," at 5 (Aug. 15, 2011).

communicating,"[56] 35% of American adults have taken the next step and migrated to smartphones.[57] Two-thirds of these smartphone users access the Internet or email on a normal day, and one quarter of these users indicate a preference to go online using their smartphone, rather than with a personal computer.[58]

Given these trends and the general agreement among parties that universal service support must be competitively and technologically neutral, the Commission must ensure that consumer preferences do not take a back seat to legacy technologies or business models. New support mechanisms should therefore be set and sized in an amount that is commensurate with the importance of a service to consumers. In so doing, the Commission must weigh carefully whether the framework it adopts will help or impede the twin goals of maintaining and advancing the United States' mobile broadband leadership and fulfilling the Act's mandate that it ensure access to "reasonably comparable" services in rural areas through "specific, predictable and sufficient" support mechanisms.[59]

Just as the ABC Plan and the Joint Letter propose an empirical methodology for sizing support for ILECs,[60] the Mobility Fund should be sized based on empirical evidence of the need for mobility support. In this regard, US Cellular has submitted a model comparable to the ABC Plan model that calculates the amount of support necessary to fund the deployment and on-going

[56] *Id.* at 2.

[57] Pew Internet & American Life Project, "35% of American adults own a smartphone," at 2 (Jul. 11, 2011).

[58] *Id.* at 3.

[59] *See* 47 U.S.C. §§ 254(e), 254(b)(3).

[60] The ABC Plan uses an economic cost model to determine support for price-cap ILECs. ABC Plan, Att. 1 at 3-4; Atts. 2-3. The Joint Letter and RLEC Plan use rate-of-return carriers' book costs as a proxy for necessary support amounts. Joint Letter at 2; RLEC Plan at 28-36.

support of mobile networks in high cost areas.[61] U.S. Cellular estimated that the total required funding in just four states would be approximately $122 million per year.[62] CTIA encourages the Commission explore this approach fully.

Because the amount of mobility support should be determined on an empirical basis, it should not simply be a residual number after the need for fixed broadband support has been determined.[63] In addition, while CTIA supports the use of satellite technology to reach extremely high-cost areas,[64] the Commission should fund any "alternative technology" proposals out of the mechanisms designed for fixed broadband connections. Funding for satellite broadband appears to be envisioned as an alternative for wireline broadband where terrestrial costs are excessive,[65] and satellite broadband service is generally fixed, not mobile. As a result, there is no basis to divert these funds from mobility support.

Finally, the appropriate amount of mobility support also does not depend on the amount that wireless carriers save in intercarrier compensation payments as a result of reform. In the wireless industry, in particular, any intercarrier compensation savings will be "competed away" – benefiting consumers through lower rates, increased capacity and coverage, and improved

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[61] *See* CostQuest Associates, Inc., *U.S. Cellular USF Mobility Model Report*, at 5, 14 (Aug. 5, 2011) (attached to Letter from David A. LaFuria, Counsel for U.S. Cellular Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (filed Aug. 6, 2011)).

[62] *Id.* at 21-27.

[63] *Cf.* ABC Plan, Att. 1 at 8 ("The available AMF support in a given year is the difference between the overall constraint on the size of the high-cost fund and the sum of support from the CAF for price-cap LEC areas, support from the transitional access replacement mechanism for price cap LECs, any remaining legacy support provided to price cap incumbent LEC ETCs and CETCs, and any support provided to rate-of-return incumbent LECs.").

[64] ABC Plan, Att. 1 at 5, 8.

[65] *Id.*

service quality – rather than being retained by wireless carriers.[66] As a result, intercarrier compensation reductions would not, in any meaningful sense, "offset" reductions in wireless support below current levels.[67] In any event, however, it is unclear why the Commission would undertake this type of comparison with regard to wireless carriers but not other ETCs, given that intercarrier compensation reform will lower costs for a broad range of providers. Such an approach – one that singles out CMRS for pass through of savings – would not be technologically neutral and thus would fail to satisfy the statutory requirement.

IV. THE CONSENSUS ACKNOWLEDGES THE NEED TO REEXAMINE THE SUPPORT MECHANISMS FOR RATE-OF-RETURN LECS

A. The Commission Should Take Steps to Limit the Impact of Support Mechanisms on the Increasingly Competitive Marketplace

One of the central shortcomings of the current high-cost system is that much of it relies on guaranteed rate-of-return mechanisms that do not reflect the level of competition that has developed, and will continue to develop, across the U.S. CTIA is concerned that its members increasingly compete with rate-of-return carriers in both the voice and broadband markets. As the Commission has acknowledged, "in an increasingly competitive marketplace with unsubsidized competitors operating in a portion of incumbent's territories, permitting carriers to be made whole through USF lessens their incentives to become more efficient and offer innovative new services to retain and attract customers."[68] CTIA is particularly concerned about the impact of this regulatory regime on the competitive landscape.

[66] *See, e.g.*, ABC Plan, Att. 4 at 9 (predicting 100% pass-through).

[67] Public Notice at 2.

[68] NBP at 147.

Support mechanisms that insulate certain providers from competitive pressure would be manifestly unfair, and potentially retard both the development of competition and the deployment of broadband facilities. These challenges are exacerbated, and will continue to be exacerbated, as long as funding from competitors (in the form of USF support, ARM support, and intercarrier payments) is used to fill gaps in rate-of-return revenue requirements.[69] Thus, in order to achieve a "reform[ed] and modernize[d]" universal service fund and intercarrier compensation system that are consistent with "recent technological, market, and regulatory changes,"[70] CTIA believes it is critical that the Commission craft support mechanisms that do not ensure that rate-of-return carriers are "made whole" out of universal service for competitive losses.

Moreover, CTIA believes that, to the extent the Commission determines that rate-of-return regulation should be retained for some period of time, the Commission should implement common-sense reforms, including reducing the target rate of return that carriers may earn, as well as forming a task force to recommend a glide path for elimination of rate-of-return regulation.

B. Any Right of First Refusal Should Not Disproportionately Affect Mobile Providers

New technologies, including wireless technologies, have created a myriad of new communications options for all consumers, including rural consumers.[71] Many mobile providers

[69] It would of course be possible for the Commission to guarantee ILECs' rates of return entirely from end-user revenue, as is done for example in the energy context.

[70] Public Notice at 1.

[71] *See, e.g.,* CTIA NOI/NPRM Comments, WC Docket Nos. 10-90 *et al.* (filed July 12, 2010) at 2-5 (*inter alia* noting consumers' strong demonstrated preference for mobile services); *See also generally supra* Section III.

are in the early stages of deploying LTE and WiMax services that are likely to meet the Commission's proposed definition of broadband service.[72] These new service deployments are likely to be a meaningful broadband alternative for rural consumers and businesses in the next few years.

Thus, CTIA is concerned that proposals to implement a right of first refusal mechanism[73] may exclude wireless carriers from meaningful participation in the universal service program, to the detriment of rural consumers. At minimum, the Commission should carefully examine the timing and details of any proposed right of first refusal to ensure that the Commission does not negatively impact the developing competitive landscape and consumer choice.

While CTIA consistently has supported the development of competitively- and technologically-neutral universal service support mechanisms, CTIA does not foreclose the possibility that the Commission might establish a distinct and sufficiently robust Mobility Fund (targeting support to the deployment of mobile broadband in high-cost areas) that might address some concerns about the short-term use of a right of first refusal for CAF support.[74]

V. THE COMMISSION MUST IMMEDIATELY ADDRESS TRAFFIC PUMPING, CONSISTENT WITH THE ABC PLAN

The ABC Plan calls for an immediate FCC response to arbitrage schemes such as traffic pumping to go into effect on January 1, 2012.[75] CTIA strongly supports this proposal; as CTIA has argued, traffic pumping schemes continue to be a significant and growing problem.[76]

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[72] *See, e.g.*, Public Notice at 3 (citing the ABC Plan's proposed 4 Mbps download/768 kbps upload standard).

[73] Public Notice at 3-4.

[74] *See supra* Section III.

[75] *See* ABC Plan Framework at 10.

Because the ABC Plan does not include specific rule recommendations to thwart traffic pumping, CTIA urges the Commission to strongly consider its previous recommendations in this docket.[77] First, the remedies for traffic pumping must address all types of traffic (including intra-MTA wireless traffic subject to the reciprocal compensation regime) and must cover all potential traffic-pumpers and all providers.[78] Second, the trigger for remedial action should be a significant traffic imbalance, as opposed to the presence of a revenue-sharing arrangement.[79] A trigger based solely on the presence of revenue-sharing arrangements would be difficult to enforce and subject to evasion or gaming, including creative corporate structures and vertical integration by traffic-pumpers.

Even with the proposed reform of intercarrier compensation rates, the imperative for swift reform to address traffic pumping arbitrage remains strong. The current proposals for intercarrier compensation rate reform take a staggered approach to different access rate elements and reciprocal compensation rates, and even at their end states would not unify all access rate elements.[80] This is particularly important with regard to rate-of-return ILECs, whose rates would be subject to an even slower and more staggered phase-down under the RLEC Plan and the Joint

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[76] *See, e.g.*, Letter from Scott K. Bergmann, CTIA, to Marlene K. Dortch, Federal Communications Commission, CC Docket No. 01-92 (Nov. 24, 2010), Att. A. *See also* Connectiv Solutions, *Traffic Pumping Cost Wireless Carriers More than $150 Million in 2010* (Mar. 31, 2011), *available at* http://www.connectiv-solutions.com/Traffic-Pumping-Cost-Wireless-Carriers-More-Than-150-Million-in-2010.html.

[77] CTIA Comments, CC Docket Nos. 01-92 *et al.* (filed April 1, 2011) ("CTIA Arbitrage Comments").

[78] *Id.* at 5-6.

[79] *Id.* at 6-8.

[80] *See, e.g.*, ABC Plan at 11.

Letter.[81] Thus, to avoid creating new potential opportunities for abuse, the Commission must move swiftly to enact robust and comprehensive rules to combat intercarrier compensation rate arbitrage, consistent with CTIA's advocacy.

VI. CONCLUSION

CTIA urges the Commission to enact long-overdue universal service and intercarrier compensation reform consistent with these comments.

Respectfully submitted,

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[81] Joint Letter at 3 n.1.